IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 578 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE
HON'BLE MR. JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)

Versus

MAKBUL MAHAMAD KHOKHAR - Opponent(s)

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Appearance :
MR.SUDHANSHU PATEL, ASSISTANT PUBLIC PROSECUTOR for Petitioner No(s).: 1.
None for Respondent No(s).: 1.

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CORAM : HON'BLE MR.JUSTICE A.R.DAVE
and
HON'BLE MR. JUSTICE MD SHAH

Date : 18/07/2005

ORAL JUDGMENT

(Per : HON'BLE MR.JUSTICE A.R.DAVE)

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1. In this appeal, the State of Gujarat has challenged the validity of an order

dated 30th January, 2003 passed by the Additional Sessions Judge, Junagadh in Sessions Case No. 31 of 2001 so far as accused No.2 is concerned as he has been acquitted by the said judgment.

2. By virtue of the impugned judgment, accused No.1 has been convicted under the provisions of Sections 302, 449 and 332 of the Indian Penal Code and U/S. 135 of the Bombay Police Act whereas accused No.2 has been acquitted.

3. We have heard ld. Assistant Public Prosecutor Mr. Sudhanshu Patel and have also perused the copies of the evidence which had been adduced before the Trial Court.

4. The facts giving rise the entire incident are as under :

The deceased was a lawyer and a notary who was attacked by accused No.1 with a knife whereas accused No.2 is alleged to have accompanied accused No.1. Accused No.2 was having a stone in his hand and he gave a threat to the complainant to the effect that the complainant should remain away otherwise accused No.2 would throw the stone and injure the complainant.

Accused No.1, who was alleged to have murdered the deceased, was

caught on the spot whereas accused No.2 had run away. The complainant had a glimpse of accused No.2, but, as there was no identification parade, it was not possible to say as to who was accused No.2. Merely on the basis of a statement made by accused No.1, accused No.2 had been implicated and in absence of any test identification parade, the Trial Court has come to the conclusion that accused No.2 cannot be said to have been involved in the offence alleged to have been committed by him.

5. We have independently appreciated the evidence which had been adduced before the Trial Court. Upon perusal of the evidence, we are of the view that the prosecution had failed to establish its case against the accused No.2 and therefore, the Trial Court has rightly acquitted accused No.2. We do not see any reason to come to any other conclusion than the one which has been arrived at by the Trial Court.

6. Looking to the facts of the case and for the reasons stated hereinabove, we dismiss the appeal.

[A.R. DAVE, J.]

[M.D. SHAH, J.]

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